UNITED STATES PATENT AND TRADEMARK OFFICE

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Sheryl Sue Holloway
Blakely, Sokoloff, Taylor & Zafman LLP
12400 Wilshire Boulevard, Seventh Floor
Los Angeles, CA 90024

EXAMINER
SALCE, JASON P

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/696,609
Filing Date: October 24, 2000
Appellant(s): HOFRICHTER ET AL.

Sheryl Sue Holloway
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/28/2008 appealing from the Office action

mailed 10/12/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct

(4) Status of Amendments After Final

The statement of the status of claims contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Sezan et al. (U.S. Patent No. 6,236,395)

Cobbley et al. (U.S. Patent No. 5,818,510)

Kunkel et al. (U.S. Patent No. 2002/0056093)

Kenner et al. (U.S. Patent No. 5,956,716)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1 – 4, 6 – 9, 11 – 14, 16 – 19, 21 – 24, 26 – 29, 31 and 34-35 are rejected

under 35 U.S.C. 103(a) as being unpatentable over Sezan et al. (U.S. Patent No.

6,236,395) in view of Cobbley et al. (U.S. Patent No. 5,818,510).

Referring to claim 1, Sezan discloses a media storage device implementing a

method of enabling automated management of data stored on said media storage

device (**see Column 6, Lines 23-38 for managing data stored on a media storage**

device).

Sezan also discloses receiving content data at said media storage device (**see**

AV Program 38 containing video/content data in Figure 2 and Column 7, Lines 55-

56).

Sezan also discloses receiving context data at said media storage device (**see**

AV Program 38 for further containing PSIP/DVB-SI data/context data, which is

received by at receiver at Column 7, Lines 55-56), wherein said content data and

said context data update part of an audiovisual program stored on the media storage

device ().

Sezan also discloses receiving executable storage management instructions

from a media service provider (**see Column 7, Line 55 through Column 8, Line 3 for**

receiving a program, user and/or system description scheme over a network) that,

when executed, perform automated management of said media storage device without

requiring user input (**see Column 8, Line 56 through Column 9, Line 6 for using the**

user or system description scheme to trigger the highlight generation

functionality (*further discussed at Column 7, Lines 30-36*), which is performed

without requiring user input (*further note Column 48-52*)).

Sezan also discloses storing said content data and said context data on said

media storage device in accordance with said storage management instructions (**see**

Column 9, Lines 1-5 for storing both the preferred views (*content clips making up*

a 5 minute highlight of a program) **and associated data in the program description**

scheme).

Although Sezan discloses creating a 5 minute highlight of clips from a program

(**see above**) and allows a user to delete outdated program clips that have already been

viewed (**see Column 10, Lines 10-11**), Sezan fails to disclose that said content data

and said context data update part of an audiovisual program stored on the media

storage device, identifying previously stored content data at said media storage device

as being outdated using said received context data and replacing said previously stored

content data with said received content data.

Cobbley discloses identifying previously stored content data at said media

storage device as being outdated using said received context data (**see Column 13,**

Lines 20-23) and replacing said previously stored content data with said received

content data (**see Column 13, Lines 46-49**).

Cobbley also discloses that said content data and said context data update part

of an audiovisual program stored on the media storage device (**see Column 13, Lines**

62-67).

At the time the invention was made, it would have been obvious to a person of

ordinary skill in the art to modify the media storage management process, as taught by

Sezan, using the segment updating management method, as taught by Cobbley, for the

purpose of providing a beneficial system which stores broadcast information in an

efficient manner, keeping only portions of the information which is most current and

provide a system which allows an individual to quickly and easily access the stored

information (**see Column 1, Lines 64 through Column 2, Lines 2 of Cobbley**).

Regarding claim 2, Sezan discloses the claimed processor and computer

readable memory as required to perform the function of automated management of data

stored on the storage medium (see col 6 lines 23 – 39, col 6 line 63 – col 7 line 40).

Regarding claims 3, 13 and 23, Sezan discloses "*It is preferred to maintain the*

program description scheme separate from the **system description scheme** *because*

the **content providers repackage** *the content and* **description schemes** *in different*

styles, times and formats" (see col. 7 lines 40 – 45) and thus discloses a storage

management service provider located remotely from said media storage device.

Regarding claim 4, Sezan discloses the claimed managing content data and

context data of media signal stored on the media storage device according to storage

management instructions (see col 9 lines 1- 7, col 9 line 40 – col 10 line 37, col 7 lines 7

– 38).

Regarding claims 6 and 8, Sezan discloses deleting of stored programs and

writing of programs (see col 11 lines 50 – 67) per a user description profile scheme and

the system description scheme. It is noted that the system description scheme is used

for the recording or writing of new media signal (see col. 7 lines 16 – 49) thus Sezan

discloses the claimed "allowing overwriting of a new media signal over a media signal recorded onto said media storage device in accordance with said storage management instructions".

Regarding claim 7, Sezan discloses receiving user preferences from said on-site user (see col 5 lines 37-45, col 9 lines 40 – 50).

Regarding claims 9 and 31, Sezan discloses "*the system description scheme may be transported to the source to provide the source with view or other capabilities that the device with image, audio and/or video content customized or otherwise suitable for the particular device*" (see col. 8 lines 1 – 8) and also discloses "*…because the content providers repackage the content and description schemes in different styles, times and formats*" and thus discloses the claimed limitations as well as updating the description schemes (see col 6 lines 1 – 6, col 9 lines 9 – 25).

Claims 11 and 21, are met by the discussions above.

Regarding claims 12 and 22, Sezan discloses enabling the storage management instructions to execute on the on-site media storage device (see col 6 lines 23 – 39, col 6 line 63 – col 7 line 40).

Claims 14, 16, 18, 19, 24, 26, 28 and 29 are met by the discussions above.

Regarding claims 17 and 27, Sezan discloses a system description scheme

records programs based on preference data in user description scheme (see col. 9 lines

41 – 52, col. 7 lines 7 – 15).

Referring to claims 34-35, Sezan teaches that the context data is received at said

on-site media storage device (see Figure 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 5, 10, 15, 20, 25 and 30 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Sezan et al (6,236,395) in view of Cobbley et al. (U.S. Patent No.

5,818,510) in further view of Kunkel et al (US 2002/0056093).

Regarding claims 5, 10, 20 and 30, Sezan and Cobbley fail to disclose

providing context-sensitive management and wherein the storage management

instructions are capable of managing a discrete context-content clip of data.

In analogous art, Kunkel teaches a system which filters additional descriptive

information at the set-top box according to demographic information for the benefit of

providing more targeted additional information (see Paragraph 0020).

Therefore, it would have been obvious to an artisan skilled in the art at the time

of the invention to include managing the context of description scheme in Sezan and

Cobbley for the benefit of targeting and thus providing descriptive information that a

user would find more interesting or useful.

4. Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Sezan et al (6,236,395) in view of Cobbley et al. (U.S. Patent No. 5,818,510) in

further view of Kenner et al (US 5,956,716).

Regarding claims 32 and 33, as discussed above, Sezan and Cobbley disclose

receiving executable storage management instructions at a media storage device to

record a program by receiving context data associated with the program, wherein the

storage management instructions instruct the media storage device to store the

program and automatically executing the received storage management instructions

without requiring a user input. Sezan and Cobbley fail to disclose receiving an updated

version of a particular one of a plurality of clips of a program stored at a media storage

device and using the management instructions to store one of the plurality of clips.

Kenner teaches storing video clips at a user device. Kenner further recognizes the

video clips stored may not be current and thus teaches providing updated clips to a

user device (see col. 5 lines 1 – 15, col. 28 lines 59 – 65).

Therefore, it would have been obvious to one having ordinary skill in the art at

the time the invention was made to modify Sezan and Cobbley to include the claimed

limitations for the benefit of providing a user with the most up-to-date and recent clips

and programming.

Regarding claim 33, the combination of Sezan, Cobbley and Kenner teaches

the claimed limitation. It is noted that since Kenner teaches receiving a displaying a

updated clip, necessarily the user can output a program before the updated clip is

received or can also output the program after the updated clip is received.

(10) Response to Argument

**I.   Claims 1-4 and 6-9 are Patentable under 35 U.S.C. § 103(a) over Sezan in
view of Cobbley, because the combination does not teach or suggest all elements
in the claims.**

Applicant argues that Sezan's description schemes do not equate to the claimed

executable storage management instructions. Applicant also notes data can be used in

conjunction with execution of an instruction, but mere data is not executable by itself.

The examiner disagrees and notes that Applicant's specification also teaches

that the storage management instructions are simply data that is being executed to

control what pieces of data are stored by Applicant's system (**see Figure 2B for**

memory 206 storing data in memory that directs the system to store pieces of

received content (further note Page 17, Second Paragraph of Applicant's

specification)). Applicant provides no argument as to how the executable storage

management instructions defined by Applicant's specification differ from the executable

storage management instructions taught by Sezan (**see Column 9, Lines 1-8 and**

Lines 41-67 of Sezan).

The examiner further notes that since the description scheme data is clearly

being used by the system of Sezan to manage what portions of data are to be stored

(**see Column 9, Lines 1-8 and Lines 41-67 of Sezan**), Sezan clearly teaches that the

description scheme data contains executable storage management instructions. The

examiner further notes that Sezan's description scheme data must be

processed/executed by the various modules (**42, 44, 50 and 52 in Figure 2 of Sezan**)

in order for the system of Sezan to even function as disclosed (**thereby storing**

selective pieces of content, as cited above).

As stated by Applicant, "*data can be used in conjunction with execution of an*

instruction, but mere data is not executable by itself". The examiner disagrees and

notes that Applicant's specification provides no suggestion or teaching as to how the

actual executable storage management instructions differ from other data stored in

memory 208 of Applicant's system. Again, description scheme data is processed by the

system Sezan in order to selectively store pieces of content (**see above**), therefore data

clearly is executable by itself, as evidenced by Sezan.

Applicant further argues that because Cobbley is directed toward transmitting

and storing audiovisual segments and segments are not executable, Cobbley cannot

teach or suggest receiving or generating and transmitting storage management
instruction as claimed.

The examiner notes that Cobbley is not used to teach receiving, generating and
transmitting storage management instructions. Sezan clearly teaches these limitations
as stated in the Final Rejection (**see above**).

In response to applicant's arguments against the references individually, one
cannot show nonobviousness by attacking references individually where the rejections
are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208
USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir.
1986).

II.   Claims 11-14, 16-19, 21-24, 26-29, 31 and 34-35 are Patentable under 35 U.S.C. § 103(a) over Sezan in view of Cobbley, because the combination does not teach or suggest all elements in the claims.

In response to Applicant arguments regarding these claims, see the examiner's
rebuttal above regarding Sezan teaching executable storage management instructions.

III.   Claims 5, 10, 20 and 30 are Patentable under 35 U.S.C. § 103(a) over Sezan in view of Cobbley and Kunkel, because the combination does not teach or suggest all elements in the claims.

In response to Applicant arguments regarding these claims, see the examiner's

rebuttal above regarding Sezan teaching executable storage management instructions.

IV. Claims 32 and 33 are Patentable under 35 U.S.C. § 103(a) over Sezan in view of Cobbley and Kenner, because the combination does not teach or suggest all elements in the claims.

In response to Applicant arguments regarding these claims, see the examiner's

rebuttal above regarding Sezan teaching executable storage management instructions.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jason Salce

/Jason P Salce/

Primary Examiner, Art Unit 2623

June 6, 2008

Conferees:

Scott Beliveau

/Scott Beliveau/

Supervisory Patent Examiner, Art Unit 2623

Vivek Srivastava

/Vivek Srivastava/

Supervisory Patent Examiner, Art Unit 2623